

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA MAJOR FACILITY SITING ACT;
5 DECREASING THE TIMEFRAMES FOR THE REVIEW OF ELECTRICAL ENERGY GENERATION FACILITIES
6 THAT USE NATURAL GAS; AMENDING SECTIONS 75-20-104, 75-20-213, 75-20-215, AND 75-20-216,
7 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10

11 **Section 1.** Section 75-20-104, MCA, is amended to read:

12 **"75-20-104. Definitions.** In this chapter, unless the context requires otherwise, the following
13 definitions apply:

14 (1) "Addition thereto" means the installation of new machinery and equipment that would
15 significantly change the conditions under which the facility is operated.

16 (2) "Application" means an application for a certificate submitted in accordance with this chapter
17 and the rules adopted under this chapter.

18 (3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts,
19 diversion dams, pipelines, transmission substations, storage ponds, reservoirs, and any other device or
20 equipment associated with the production or delivery of the energy form or product produced by a facility,
21 except that the term does not include a facility or a natural gas or crude oil gathering line 17 inches or less
22 in inside diameter.

23 (4) "Board" means the board of environmental review provided for in 2-15-3502.

24 (5) "Certificate" means the certificate of environmental compatibility issued by the department
25 under this chapter that is required for the construction or operation of a facility.

26 (6) "Commence to construct" means:

27 (a) any clearing of land, excavation, construction, or other action that would affect the
28 environment of the site or route of a facility but does not mean changes needed for temporary use of sites
29 or routes for nonutility purposes or uses in securing geological data, including necessary borings to
30 ascertain foundation conditions;

(b) the fracturing of underground formations by any means if the activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by subsection (8)(c) or (8)(d), including upgrading to a design capacity covered by subsection (8)(c), except that the term does not include normal maintenance or repair of an existing facility.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Facility" means:

(a) except for crude oil and natural gas refineries and those facilities subject to The Montana Strip and Underground Mine Reclamation Act, each plant, unit, or other facility and associated facilities designed for or capable of:

(i) generating 250 megawatts of electricity or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant;

(ii) producing 25 million cubic feet or more of gas derived from coal per day or any addition thereto, except pollution control facilities approved by the department and added to an existing plant;

(iii) producing 25,000 barrels of liquid hydrocarbon products per day or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant;

(iv) enriching uranium minerals or any addition thereto; or

(v) for purposes of 75-20-204 only, generating 50 megawatts of hydroelectric power or more or any addition thereto;

(b) each plant, unit, or other facility and associated facilities generating less than 250 megawatts that would be defined in subsection (8)(a):

(i) emitting 300 tons a year of particulate matter at 10 microns or less;

(ii) that is not employing best available control technology pursuant to 42 U.S.C. 7479 or is not employing lowest achievable emission rates as required by Title 75, chapter 2, or rules adopted under Title 75, chapter 2;

(iii) directly affecting:

- 1 (A) a class I airshed as designated pursuant to 42 U.S.C. 7470, et seq.;
- 2 (B) a class I river or stream as designated pursuant to 33 U.S.C. 1251, et seq.;
- 3 (C) habitat used by a threatened or endangered species of plant or animal as designated pursuant
- 4 to 16 U.S.C. 1531, et seq.; or
- 5 (D) one of the following exclusion areas:
- 6 (I) national wilderness areas designated pursuant to 16 U.S.C. 1131, et seq.;
- 7 (II) national primitive areas;
- 8 (III) national parks as designated pursuant to 16 U.S.C. 1a-1, et seq.;
- 9 (IV) rivers in the national wild and scenic river system as designated pursuant to 16 U.S.C. 1271,
- 10 et seq.; or
- 11 (V) national wildlife refuges and ranges as designated pursuant to 16 U.S.C. 668dd, et seq.; or
- 12 (iv) that would require a permanent workforce greater than 300 workers;
- 13 (c) each electric transmission line and associated facilities of a design capacity of more than 69
- 14 kilovolts, except that the term:
- 15 (i) does not include an electric transmission line and associated facilities of a design capacity of
- 16 230 kilovolts or less and 10 miles or less in length; and
- 17 (ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts
- 18 but less than 230 kilovolts for which the person planning to construct the line has obtained right-of-way
- 19 agreements or options for a right-of-way from more than 75% of the owners who collectively own more
- 20 than 75% of the property along the centerline;
- 21 (d) except pipelines within the boundaries of the state that are used exclusively for the irrigation
- 22 of agricultural crops, each pipeline, whether partially or wholly within the state, greater than 17 inches in
- 23 inside diameter and 30 miles in length, and associated facilities;
- 24 (e) any use of geothermal resources, including the use of underground space in existence or to
- 25 be created, for the creation, use, or conversion of energy, designed for or capable of producing
- 26 geothermally derived power equivalent to 25 million Btu's per hour or more or any addition thereto, except
- 27 pollution control facilities approved by the department and added to an existing plant;
- 28 (f) any underground in situ gasification of coal; or
- 29 (g) an energy-related project for which the department has granted a petition pursuant to
- 30 75-20-201(5).

(9) "Gas turbine" means a facility that generates electrical energy using an electric generator fired with natural gas.

(9)(10) "Person" means any individual, group, firm, partnership, corporation, limited liability company, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(10)(11) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

(11)(12) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

Section 2. Section 75-20-213, MCA, is amended to read:

"75-20-213. Supplemental material -- amendments. (1) An application for an amendment of an application or a certificate must be in the form and contain the information that the department by rule or by order prescribes. Notice of an application must be given as set forth in 75-20-211(3) through (5).

(2) An application may be amended by an applicant any time prior to the department's recommendation. If the proposed amendment is such that it prevents the department or the agencies listed in ~~75-20-216(6)~~ 75-20-216(7) from carrying out their duties and responsibilities under this chapter, the department may require additional filing fees as the department determines necessary, or the department may require a new application and filing fee.

(3) The applicant shall submit supplemental material in a timely manner as requested by the department or as offered by the applicant to explain, support, or provide the detail with respect to an item described in the original application, without filing an application for an amendment. The department's determination as to whether information is supplemental or whether an application for amendment is required is conclusive."

Section 3. Section 75-20-215, MCA, is amended to read:

"75-20-215. Filing fee -- accountability -- refund -- use. (1) (a) A filing fee must be deposited in the state special revenue fund for the use of the department in administering Title 75, chapter 1, and this

chapter. The applicant shall pay to the department a filing fee, as provided in this section, based upon the department's estimated costs of processing the application under this chapter. The fee may not exceed the following scale based upon the estimated cost of the facility:

- (i) 4% of any estimated cost up to \$1 million; plus
- (ii) 1% of any estimated cost over \$1 million and up to \$20 million; plus
- (iii) 0.5% of any estimated cost over \$20 million and up to \$100 million; plus
- (iv) 0.25% of any amount of estimated cost over \$100 million and up to \$300 million; plus
- (v) 0.125% of any amount of estimated cost over \$300 million and up to \$1 billion; plus
- (vi) 0.05% of any amount of estimated cost over \$1 billion.

(b) The department may allow in its discretion a credit against the fee payable under this section for the development of information or providing of services required under this chapter or required for preparation of an environmental impact statement or assessment under the Montana or national environmental policy acts. The applicant may submit the information to the department, together with an accounting of the expenses incurred in preparing the information. The department shall evaluate the applicability, validity, and usefulness of the data and determine the amount that may be credited against the filing fee payable under this section. Upon 30 days' notice to the applicant, this credit may at any time be reduced if the department determines that it is necessary to carry out its responsibilities under this chapter.

(2) (a) The department may contract with an applicant for the development of information, provision of services, and payment of fees required under this chapter. The contract may continue an agreement entered into pursuant to 75-20-106. Payments made to the department under a contract must be credited against the fee payable pursuant to this section. Notwithstanding the provisions of this section, the revenue derived from the filing fee must be sufficient to enable the department, the board, and the agencies listed in ~~75-20-216(6)~~ 75-20-216(7) to carry out their responsibilities under this chapter. The department may amend a contract to require additional payments for necessary expenses up to the limits set forth in subsection (1)(a) upon 30 days' notice to the applicant. The department and applicant may enter into a contract that exceeds the scale provided in subsection (1)(a).

(b) If a contract is not entered into, the applicant shall pay the filing fee in installments in accordance with a schedule of installments developed by the department, provided that an installment may not exceed 20% of the total filing fee provided for in subsection (1).

(3) The estimated cost of upgrading an existing transmission substation may not be included in the estimated cost of a proposed facility for the purpose of calculating a filing fee.

(4) If an application consists of a combination of two or more facilities, the filing fee must be based on the total estimated cost of the combined facilities.

(5) The applicant is entitled to an accounting of money expended and to a refund with interest at the rate of 6% a year of that portion of the filing fee not expended by the department in carrying out its responsibilities under this chapter. A refund must be made after all administrative and judicial remedies have been exhausted by all parties to the certification proceedings.

(6) The revenue derived from filing fees must be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out its and the board's other responsibilities under this chapter."

Section 4. Section 75-20-216, MCA, is amended to read:

"75-20-216. Study, evaluation, and report on proposed facility -- assistance by other agencies.

(1) After receipt of an application, the department shall within 60 days notify the applicant in writing that:

(a) the application is in compliance and is accepted as complete; or

(b) the application is not in compliance and shall list the deficiencies. Upon correction of these deficiencies and resubmission by the applicant, the department shall within 30 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and this section, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301, and shall issue a decision, opinion, order, certification, or permit as provided in subsection (3). The department shall use, to the extent that it considers applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) Except as provided for in 75-20-231 and subsection (5) of this section, the department shall issue within 1 year following the date of acceptance of an application any decision, opinion, order, certification, or permit required under the laws, other than those contained in this part, administered by the department. A decision, opinion, order, certification, or permit, with or without conditions, must be made under those laws. Nevertheless, the department retains authority to make the determination required

1 under 75-20-301(1)(c) or (3). The decision, opinion, order, certification, or permit must be used in the final
2 site selection process. Prior to the issuance of a preliminary decision by the department and pursuant to
3 rules adopted by the department, the department shall provide an opportunity for public review and
4 comment.

5 (4) Except as provided in 75-20-231 and subsection (5) of this section, within 1 year following
6 acceptance of an application for a facility, the department shall issue a report that must contain the
7 department's studies, evaluations, recommendations, other pertinent documents resulting from its study
8 and evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana
9 Environmental Policy Act, if any. If the application is for a combination of two or more facilities, the
10 department shall issue its report within the greater of the lengths of time provided for in this subsection
11 for either of the facilities.

12 (5) For an application for a gas turbine, the department shall issue the decisions, opinions, orders,
13 certifications, permits, environmental analyses, and reports referenced in subsections (3) and (4) within
14 9 months following the date of acceptance of an application.

15 ~~(5)~~(6) For projects subject to joint review by the department and a federal land management
16 agency, the department's certification decision may be timed to correspond to the record of decision
17 issued by the participating federal agency.

18 ~~(6)~~(7) The departments of transportation; commerce; fish, wildlife, and parks; natural resources
19 and conservation; revenue; and public service regulation shall report to the department information relating
20 to the impact of the proposed site on each department's area of expertise. The report may include opinions
21 as to the advisability of granting, denying, or modifying the certificate. The department shall allocate funds
22 obtained from filing fees to the departments making reports to reimburse them for the costs of compiling
23 information and issuing the required report."

24
25 NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

26 - END -